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17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 **ALFONSO CARRANZA,**

21 Petitioner,

22 v.

23 **ROBERT AYERS, JR., Warden,**

24 Respondent.

25 C 08-2511 PJH

26 **RESPONDENT'S REQUEST
FOR STAY PENDING
ISSUANCE OF THE
MANDATE IN *Hayward***

27 Judge: The Honorable
28 Phyllis J. Hamilton

29 **INTRODUCTION**

30 Petitioner filed a Petition for Writ of Habeas Corpus, contending that his due process rights
31 were violated by the Board of Parole Hearings' 2006 decision finding him unsuitable for parole.
32 The Court ordered a response to the Petition. On May 16, 2008, the Ninth Circuit granted en
33 banc review in *Hayward v. Marshall*, 512 F.3d 536 (9th Cir. 2008), *reh'g en banc granted*, __
34 F.3d __, 2008 WL 2131400 (9th Cir. filed May 16, 2008), and oral argument is set for June 24,
35 2008. The en banc court in *Hayward* may decide whether this Court has jurisdiction over this
36 case, and the appropriate standard to be applied if there is jurisdiction. Therefore, Respondent
37 requests a stay of this case pending the issuance of the mandate in *Hayward*.

38 Req. for Stay

39 *Carranza v. Ayers*
40 C 08-2511 PJH

1 ARGUMENT
23 I.
45 **THE COURT SHOULD EXERCISE ITS DISCRETION AND STAY THIS
6 MATTER PENDING ISSUANCE OF THE MANDATE IN *Hayward*
7 BECAUSE BOTH THE BALANCE OF THE INTERESTS AND
8 CONSIDERATIONS OF JUDICIAL ORDER AND ECONOMY FAVOR
9 GRANTING A STAY.**

10 A trial court has discretion to ensure the just and efficient determination of a case by
11 staying it pending the resolution of other proceedings where a stay would be “efficient for [the
12 court’s] docket and the fairest course for the parties.” *Leyva v. Certified Grocers of Cal.*,
13 593 F.2d 857, 863 (9th Cir. 1979). In determining whether to grant a stay, a court should
14 consider the possible damage that may result, the hardship or inequity that a party may suffer,
15 and the orderly course of justice, in terms of simplifying or complicating the issues, proof, and
16 questions of law, that could result from the issuance of a stay. *Lockyer v. Mirant Corp.*, 398 F.3d
17 1098, 1109, 1111 (9th Cir. 2005). A court should also take into account the existence of similar
18 cases that are pending in the same district court, and the probability that more are likely to be
19 filed. *Id.* Staying cases that are on the forefront of an issue provides a necessary delay, allowing
20 for resolution of the issues and resulting in uniform treatment of like suits. *Id.*

21 As the resolution of *Hayward* could significantly impact this case and numerous similar
22 cases and issuing a stay would prevent unfairness and serve the interests of judicial economy, the
23 Court should exercise its discretion and stay this matter pending the issuance of the mandate in
24 *Hayward*.

25 **A. Moving Forward with This Case Before the Finality of
26 *Hayward* Does Not Serve the Interest of Judicial Economy.**

27 Granting a stay in this case serves the interests of judicial order and economy. On May
28 16, 2008, the Ninth Circuit granted rehearing en banc in *Hayward*. (Ex. 1.) At issue before the
en banc panel in *Hayward* are two threshold issues which are necessary to the resolution of this
case: 1) whether California has created a federally protected liberty interest in parole for life
inmates, and 2) if a liberty interest is created, what process is due under clearly established
Supreme Court authority. Resolution of these issues could establish that Petitioner does not have

1 a federally protected liberty interest in parole, potentially allowing the Court to dismiss his
 2 claims for lack of jurisdiction without requiring briefing from the parties. Moreover, it would be
 3 wasteful to proceed in this case without the Ninth Circuit's holdings in these matters, as the
 4 parties would need to brief issues that will be decided *en banc* and then submit supplemental
 5 briefing to apply the law as clarified in the *en banc* decision. The two rounds of pleadings may
 6 unnecessarily complicate the matters raised and would impair the orderly course of justice.
 7 Waiting for the resolution of *Hayward* would thus conserve Court resources, and prevent the
 8 Court from having to revisit this matter if *Hayward* is modified or reversed.

9 A stay would also serve judicial order and economy by maintaining uniform treatment of
 10 like suits, as once the law is settled it can be uniformly applied. In many habeas petitions
 11 challenging California parole decisions, the Ninth Circuit has *sua sponte* stayed submission of
 12 the cases until the resolution of *Hayward*. *See, e.g., Tolliver v. Carey*, no. 07-15347; *Boatman v.*
 13 *Brown*, no. 05-16199; *Smiley v. Hernandez*, no. 06-55727; *Valdivia v. Brown*, no. 08-15650;
 14 *Johnson v. Newland*, no. 04-16712; *Varner v. Brown*, no. 05-16029; *Johnson v. Finn*, no. 06-
 15 17042; *Clark v. Shepherd*, no. 06-55065; *Cooke v. Solis*, no. 06-15444.

16 Granting a stay would therefore conserve judicial resources and serve the Court's interest
 17 in orderly managing these proceedings.

18 **B. A Stay Would Not Unfairly Delay Petitioner in Pursuing His Claims.**

19 A stay of this case at the district level would not unfairly impose any additional or
 20 otherwise avoidable hardship on Petitioner. As discussed above, if the parties proceed in this
 21 case additional briefing will likely be needed after the decision in *Hayward*, perhaps delaying
 22 final resolution. Also, even if this court decides this case before *Hayward*, it is likely the losing
 23 party will file an appeal, and that appeal may be delayed pending resolution of *Hayward*. (*See*
 24 *Arg. I.A.*)

25 **CONCLUSION**

26 When the equities are balanced, the parties' interests and the interests of judicial economy
 27 support staying this case pending the final resolution of *Hayward*. Staying this case until
 28 challenges to *Hayward* are resolved and that decision becomes final promotes the orderly

1 resolution of this matter, and will assist in maintaining uniformity of like suits pending before
2 this Court and similar cases that will be filed in the future. Respondent therefore requests that
3 the Court exercise its discretion to stay this matter pending issuance of the mandate in *Hayward*.

4 Dated: June 10, 2008

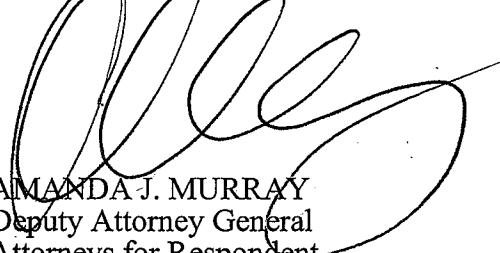
5 Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Carranza v. Ayers**

No.: **C 08-2511 PJH**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 10, 2008, I served the attached

**RESPONDENT'S REQUEST FOR STAY PENDING
ISSUANCE OF THE MANDATE IN HAYWARD**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Alfonso Carranza, E-30803
San Quentin State Prison
1 Main Street
San Quentin, CA 94964
In Pro Per**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **June 10, 2008**, at San Francisco, California.

M.M. Argarin

Declarant

M.M. Argarin

Signature

EXHIBIT 1

FILED

FOR PUBLICATION

MAY 16 2008

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

RONALD HAYWARD,

No. 06-55392

Petitioner - Appellant,

D.C. No. CV-05-07239-GAF(CT)

v.

JOHN MARSHALL, California Men's
Colony East,

ORDER

Respondent - Appellee.

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.